

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DLEHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3962/Del/2019
Assessment Year: 2014-15**

ACIT, Central Circle-19,
New Delhi.
(Appellant)

Versus

KRBL Foods Ltd., 5190,
Lahori Gate, New Delhi.
PAN: AAECK2023Q
(Respondent)

**ITA No. 3963/Del/2019
Assessment Year: 2014-15**

ACIT, Central Circle-19,
New Delhi.
(Appellant)

versus

KRBL Infrastructure Ltd., 5190,
Lahori Gate, New Delhi.
PAN: AACCK9643G
(Respondent)

Assessee by: Shri Vinod Bindal, Adv. &
Ms. Rinky Sharma, ITP
Revenue by: Ms. Sapna Bhatia, CIT-DR

Date of hearing : 11.05.2023
Date of pronouncement : 08.06.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned appeals by the Revenue in respect of two different assessee arise out of two separate orders of learned Commissioner of Income-tax (Appeals)-24, New Delhi for the assessment year 2014-15.

ITA No. 3963/Del/2019:

2. The dispute in this appeal relates to deletion of addition made under section 68 of the Income-tax Act, 1961 as well as disallowance of interest expenditure on such addition.

3. Briefly, the facts are, the assessee is an Indian company. A search and seizure operation u/s. 132 of the Act was conducted in case of the assessee as well as other group entities on 30.03.2016. As a consequence of search and seizure operation, proceeding u/s. 153A of the Act was initiated against the assessee. In response to notice issued u/s. 153A of the Act, the assessee filed its return of income on 25.08.2017 declaring loss of Rs.3,49,55,515/-. In course of assessment proceedings, the Assessing Officer noticed that the assessee is engaged in the business of contractors, builders, town planners, renting of immovable properties. He further observed that in course of search and seizure operation, it was found that the assessee had received unsecured loan of Rs.10.00 crores from M/s. Shashi Foods India Pvt. Ltd. Noticing this, the Assessing Officer called upon the assessee to furnish the details of loan availed and prove the identity and creditworthiness of the creditor as well as genuineness of the transaction. In response to the query raised, the assessee submitted the details called for and explained that the loan was taken for the

purpose of business through banking channel. It was also submitted that the assessee is paying interest on such loan through banking channel and tax has been duly deducted at source on interest paid. After considering the submissions of the assessee, the Assessing Officer observed that in course of investigation, it was found that the assessee is availing accommodation entries by way of bogus purchase bills from the firms controlled by Shri Dinesh Jain. He observed, in statement recorded on 06.06.2016 by the departmental officer, Shri Dinesh Jain accepted that he was providing bogus bills to parties on commission basis. Further, he observed, to verify the genuineness of the unsecured loan availed by the assessee, investigation was also carried out with the creditor, M/s. Shashi Foods India Pvt. Ltd. In course of such investigation, statement of Shri Gian Chand Sethi, director of M/s. Shashi Foods India Pvt. Ltd. was recorded, wherein, Shri Gian Chand Sethi confirmed of having advanced unsecured loan of Rs.10 crores to the assessee with interest rate of 9%. Further, while explaining the source from which, such loan was advanced, Shri Gian Chand Sethi stated that loan was given out of sale proceeds corresponding to certain purchases, payments of which are due. To further verify the genuineness of the loan transaction, in course of assessment proceedings, the Assessing Officer issued notice u/s. 133(6)

to M/s. Shashi Foods India Pvt. Ltd. to explain the source of fund, from which loan was advanced. In response to the said notice, the creditor again confirmed the loan transaction. On perusing the balance sheet of M/s. Shashi Foods India Pvt. Ltd., the Assessing Officer found that in the financial year 2013-14, there are 12 creditors to whom trade payables amounting to Rs.34.96 crores was pending. He observed, on examination, it was found that out of 12 trade creditors, only four could be found in their given addresses. Further clarifying the trail of fund, the Assessing Officer observed, the loan given to the assessee was returned back in F.Y. 2015-16, which was again advanced to another entity of the assessee group. Thus, he observed that entire loan advanced by M/s. Shashi Foods India Pvt. Ltd. to the assessee group is rotating between the companies managed by the group and the entities belonging to Shri Gian Chand Sethi and Dinesh Jain. Based on the aforesaid analysis of facts, the Assessing Officer ultimately concluded that the creditworthiness of the creditor and genuineness of the unsecured loan availed of Rs.10 crores could not be established by the assessee. Accordingly, he treated the unsecured loan of Rs.10 crores as unexplained cash credit u/s. 68 of the Act and added back to the income of the assessee. As a natural corollary, he disallowed the interest paid on such loan. Being aggrieved with the aforesaid additions,

the assessee preferred an appeal before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner(Appeals) found that not only in the course of search and seizure operation, but in course of assessment proceedings as well, the creditor has confirmed of having advanced Rs.10 crores at the interest rate of 9%. He observed, the creditor has also explained the source of fund and the loan transaction has been done through banking channel. Thus, he was of the view that once the assessee had discharged its liability of establishing the identity and creditworthiness of the creditor and genuineness of the transaction, the loan available cannot be treated as non-genuine. He observed, once, the assessee has proved the source of unsecured loan by furnishing confirmation of the creditor and has also established creditworthiness, he cannot be asked to explain the source of source. Thus, in the aforesaid premises, he held that unsecured loan availed by the assessee cannot be treated as unexplained cash credit u/s. 68 of the Act. For this reason also, he deleted the disallowance of interest paid on such loan.

4. Before us, learned Departmental Representative submitted that the Assessing Officer has made out a thorough investigation in course of assessment proceedings to ascertain the genuineness of unsecured loan

availed by the assessee. She submitted, in course of investigation carried out in post search proceedings as well as in course of assessment proceedings, it was found that the creditor M/s. Shashi Foods India Pvt. Ltd. has availed bogus purchase bills from entities controlled by Shri Dinesh Jain. She submitted, therefore, the source of funds at the hands of the creditor remains unproved. In that event, the genuineness of the unsecured loan given to the assessee also remains doubtful. Drawing our attention to the assessment order, learned Department Representative submitted, the Assessing Officer has discussed the money trail, which clearly establishes that the entire transaction relating to unsecured loan is a cooked up story, as the same amount of fund is rotating in different group entities controlled by certain persons. She submitted, without properly appreciating the facts discussed by the Assessing Officer, learned Commissioner (Appeals) has deleted the addition.

5. Strongly relying upon the observations of the learned Commissioner(Appeals), learned counsel for the assessee submitted that to establish the genuineness of loan transaction in terms of section 68 of the Act, the assessee has to establish identity and creditworthiness of the creditor as well as genuineness of the transaction. He submitted, the assessee has certainly established the identity of the creditor. In so far as

the creditworthiness of the creditor is concerned, not only the assessee has furnished confirmation from the creditor accepting the loan transaction, but also furnished the bank statement to demonstrate that the creditor has sufficient creditworthiness to advance loan. He submitted, the genuineness of the loan transaction cannot be doubted as it was through banking channel. He submitted, the Income-tax return copies along with financial statements were also furnished. Thus, he submitted that the assessee has furnished all supporting evidence to prove the loan transaction and in no way, the loan availed could have been treated as unexplained cash credit. He submitted, while making the addition, the Assessing Officer has utilized third party evidence, neither confronting such evidence to the assessee nor providing an opportunity to cross examine the persons whose statements were utilized. Thus, he submitted, when the assessee has discharged the initial onus of proving the genuineness of the loan transaction, the loan availed could not have been treated as unexplained cash credit in absence of any contrary evidence brought on record by the Assessing Officer to disprove assessee's claim. Thus, he submitted, the decision of Id. Commissioner (Appeals) should be upheld.

6. We have considered rival submissions and perused the materials on record. Undisputedly, in the year under consideration, the assessee had availed unsecured loan of Rs.10 crores from M/s. Shashi Foods India Pvt. Ltd. The Assessing Officer has treated the unsecured loan as unexplained cash credit u/s. 68 of the Act. The primary reason for doing so is, as per the post search investigation carried out in case of M/s. Shashi Foods India Pvt. Ltd., it was found that the said entity has availed bogus purchase bills from some other entities controlled by Shri Dinesh Jain. Thus, the Assessing Officer has held that since, the source of fund is itself doubtful due to the creditor indulging in bogus purchase, the unsecured loan cannot be treated as genuine. From the facts and materials on record, it is evident that in course of post search enquiries conducted in case of M/s. Shashi Foods India Pvt. Ltd., statement was recorded from the Director of the said concern, specifically, asking about the unsecured loan given to the present assessee. In response to the query raised, the Director of M/s. Shashi Foods India Pvt. Ltd. has clearly and categorically confirmed of having advanced unsecured loan at the interest rate of 9%.

7. Further, in course of assessment proceedings, the Assessing Officer again issued notice u/s. 133(6) of the Act to M/s. Shashi Foods India Pvt.

Ltd. seeking confirmation of the loan transaction. In response to the said notice, the creditor again furnished a confirmation accepting the fact that it has advanced loan of Rs.10 crores to the assessee with interest rate of 9%. It is further evident, in response to specific query raised by the Assessing Officer regarding availability of fund for advancing loan, the Director of M/s. Shashi Foods India Pvt. Ltd. had stated that the loan was advanced from the amount received from sales corresponding to the purchases, payment for which was still outstanding. Notably, to substantiate the genuineness of loan transaction, in addition to confirmation from the creditor, the assessee had furnished all other documentary evidence such as Income-tax return copies of the creditor, bank statements of the creditor, audited financial statements of the creditor etc. As against such evidences brought on record by the assessee, no contrary material has been brought on record by the Assessing Officer to firmly establish on record that the unsecured loan advanced to the assessee is non-genuine.

8. As discussed earlier, the primary reason, for which the Assessing Officer treated the loan transaction as non-genuine is, the purchases made by M/s. Shashi Foods India Pvt. Ltd. are doubtful. Assuming that the source of purchases in case of M/s. Shashi Foods India Pvt. Ltd. may be

doubtful, that by itself does not establish the fact that the entire purchase of M/s. Shashi Foods India Pvt. Ltd. are not genuine since, it is the contention of M/s. Shashi Foods India Pvt. Ltd. that the unsecured loan was sourced from the amounts received on sales corresponding to the purchases, payment for which is outstanding. On scrutiny of the assessment order, we have not found any adverse observation of the Assessing Officer with regard to the sales effected by M/s. Shashi Foods India Pvt. Ltd. In fact, the Assessing Officer has not conducted any enquiry with regard to the sales made by M/s. Shashi Foods India Pvt. Ltd. as to whether they are genuine or not. It is also relevant to observe, on examining the balance sheet of M/s. Shashi Foods India Pvt. Ltd., the Assessing Officer has noticed outstanding trade creditors of more than Rs.34 crores. Though, the Assessing Officer has observed that enquiry conducted could find only four creditors available in the given addresses, however, that does not conclusively prove that the rest of the trade creditors are non-existing. When the creditor has stated that unsecured loan was funded out of the sale proceeds available with it and there are outstanding trade creditors, without any contrary material brought on record by the Assessing Officer, such statement cannot be rejected merely on conjectures and surmises. More so, when the assessee had furnished

all documentary evidence relating to the creditor not only to prove the identity and creditworthiness of the creditor but genuineness of the transaction. In view of the aforesaid, we do not find any reason to interfere with the decision of learned first appellate authority in deleting the addition made u/s. 68 of the Act and the interest paid on the unsecured loan. Grounds are dismissed.

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9. Facts in this appeal are slightly different. In case of this assessee, on the date of search, the assessment proceeding for the impugned assessment year was not pending. In other words, assessment on the date of search has not abated. In this case, the assessee had availed two unsecured loans, i.e., Rs.7.15 crores from M/s. Index Securities and Research Pvt. Ltd. and Rs.2.45 crores from M/s. Shashi Foods India Pvt. Ltd. in the year under consideration. Based on the very same reasoning, on which the loan transaction relating to other assessee dealt by us in earlier part of the order, the Assessing Officer treated the loan transaction as non-genuine and added back u/s. 68 of the Act. The interest paid on such loan was also disallowed. The assessee contested the aforesaid additions before the Id. Commissioner (Appeals). After considering the

submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) found that the additions made by the Assessing Officer are not based on any incriminating material found as a result of search and seizure operation conducted in case of the assessee. Thus, relying upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Kabul Chawla, 380 ITR 573 and number of other decisions, learned Commissioner (Appeals) deleted the additions made by the Assessing Officer.

10. We have considered rival submissions and perused the materials on record. Learned Commissioner (Appeals) has given a categorical factual finding that the additions made by the Assessing Officer are not based on any incriminating material found as a result of search and seizure operation conducted in case of the assessee. On a careful perusal of the assessment record, we do not find that the Assessing Officer has made reference to any seized/incriminating material while making the additions u/s. 68 of the Act. In so far as the documents recovered from i-phone of Chanchal Taneja, learned Commissioner (Appeals) has recorded a finding that it cannot be considered as incriminating material. Nothing has been brought before us to controvert the factual finding of ld. Commissioner (Appeals) that the additions are not based on any

incriminating material found as a result of search. In a recent decision rendered in case of PCIT vs. Abhisar Buildwell (P.) Ltd. & Ors., (2023) 149 taxmann.com 399(SC), Hon'ble Supreme Court has affirmed the view expressed by Hon'ble jurisdictional High Court in case of CIT vs. Kabul Chawla (supra). In view of the aforesaid, we do not find any reason to interfere with the decision of learned first appellate authority. Accordingly, grounds raised are dismissed.

11. To sum up, both the appeals are dismissed.

Order pronounced in the open court on 08/06/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

*aks/-